STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

vs MSC No. 121300

JOHN RODNEY McRAE,

Defendant-Appellant.
/

COA No. 217052
Circuit Court No. 98-001151 FC

BRIEF OF THE PROSECUTING ATTORNEYS ASSOCIATION OF MICHIGAN AS AMICUS CURIAE IN SUPPORT OF THE PLAINTIFF-APPELLEE, THE PEOPLE OF THE STATE OF MICHIGAN

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STATEMENT OF JURISDICTION

Amicus defers to the People's jurisdictional statement.

STATEMENT OF QUESTION

I. *Miranda v Arizona* restricts the State's authority to conduct a custodial interrogation. Here, Defendant requested that a personal friend — who was a reserve police officer — stop by to see him in jail. Is evidence of the Defendant's admissions to his friend during their private conversation barred by the holding of *Miranda* ?

Trial Court said:	*No.*
Court of Appeals said:	*No.*
Defendant says:	*Yes.*
People say:	*No.*
Amicus says:	*No.*

STANDARD OF REVIEW

Amicus agrees with the People's statement concerning the standard of review.

STATEMENT OF FACTS

Amicus relies upon the People's statement of facts.

ARGUMENT

I.

MIRANDA *v* ARIZONA RESTRICTS THE STATE'S AUTHORITY TO CONDUCT A CUSTODIAL INTERROGATION. HERE, DEFENDANT REQUESTED THAT A PERSONAL FRIEND — WHO WAS A RESERVE POLICE OFFICER — STOP BY TO SEE HIM IN JAIL. EVIDENCE OF THE DEFENDANT'S ADMISSIONS TO HIS FRIEND DURING THEIR PRIVATE CONVERSATION WAS NOT BARRED BY THE HOLDING OF *MIRANDA*.

In this case, the Court will consider a familiar point of law in the context of a unique factual setting: following his arrest for murder, Defendant requested to speak to a personal friend of his — who happened to be a reserve police officer. During the course of their conversation, Defendant made an incriminating admission to his friend — which the prosecutor introduced as evidence at trial, helping to convict Defendant of first-degree murder. Though Defendant implies that he never made the statements at issue, he has challenged their admission on appeal.

While deferring to the excellent presentation in the People's brief on appeal for the merits of this case, it appears to *Amicus* that some critical aspects of this case may pass without notice, since this case may hold significance beyond its own facts. Accordingly, *Amicus* suggests that this Court takes a moment to place this case in its proper context — and, upon doing so, three critical points should come clearly into focus:

- First, someone is not disabled from being a friend, merely because he happens to be a law enforcement officer.

- Second, a police reservist — like any other governmental officer who is not engaged in the active investigation of a crime — is not bound by the restrictions of *Miranda*.

- And lastly, regardless of the friend's status as a police reservist, or Defendant's previously-expressed exercise of his Fifth Amendment rights, Defendant's personal invitation to his friend to come to the jail to visit him served to open the door to admitting the substance of any conversation between them — whether because the contact was personal in nature of the contact, or because Defendant reinitiated contact with a representative of Law Enforcement.

Applying the relevant factors to this case, it is apparent that the Court of Appeals reached the correct result in this case, and that this Court should affirm.

A. A law enforcement officer undertakes neither state action, nor interrogation, when talking to a friend.

In its seminal decision in *Miranda v Arizona*,[1] while disavowing any intention of "hamper[ing] the traditional function of police officers in investigating crime,"[2] the Supreme Court recognized the "inherently compelling pressures" at work in the context of custodial interrogation, and crafted its now-famous "Miranda-warnings" to "combat these pressures" and "permit a full opportunity" to exercise the constitutional right against compulsory self-incrimination.[3] Clearly, then, the purpose of *Miranda* is to protect defendants not from themselves — or from the evidence of their guilt — but solely from the compulsion inherent in custodial interrogation. And it is only

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[1] *Miranda v Arizona*, 384 US 436, 86 S Ct 1602, 16 L Ed 2d 644 (1966).

[2] *Miranda v Arizona, supra* at 477.

[3] *Miranda v Arizona, supra* at 467.

at the point of "interaction of custody and official interrogation" that the Law requires the litany and formalities of *Miranda*.[4] Accordingly, police officers undertaking custodial interrogation must advise a prisoner of his rights[5] — and respect a defendant's decision not to speak.[6] But where there is no custodial interrogation — because the accused is not undergoing interrogation,[7] is not in custody,[8] or is speaking in circumstances which do not give rise to the coercive pressures that lie at the heart of *Miranda*'s concerns[9] — then the Law presents no impediments to the State's use of a defendant's otherwise voluntary statements, because they did not arise from the sort of coercive environment that the Fifth Amendment protects us against.

However, a police officer is not stripped of all capacity for human interaction, merely because he helps to enforce the law. An officer, when not performing the functions of office, is as capable of wisdom or folly in his private life as anyone — and when acting in a private capacity,

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[4]*Illinois v Perkins*,496 US 292, 297, 110 S Ct 2394, 110 L Ed 2d 243 (1990).

[5]*Miranda v Arizona, supra*; *Rhode Island v Innis*, 446 US 291, 100 S Ct 1682, 64 L Ed 2d 297 (1980); *People v Hill*, 429 Mich 382 (1987).

[6]*See, eg, Michigan v Mosley*, 423 US 96, 96 S Ct 321, 46 L Ed 2d 313 (1975); *People v Slocum*, 219 Mich App 695 (1996). *Cf, Edwards v Arizona*, 451 US 477, 101 S Ct 1880, 68 L ed 2d 378 (1981).

[7]*See, eg, Rhode Island v Innis*, 446 US 291, 100 S Ct 1862, 64 L Ed 2d 297 (1980); *Arizona v Mauro*, 479 US 811, 107 S Ct 60, 93 L Ed 2d 19 (1986); *People v Raper*, 222 Mich App 475 (1997).

[8]*See, eg, Oregon v Mathiason*, 429 US 492, 97 S Ct 711, 50 L Ed 714 (1977); *Beckwith v United States*, 425 US 341, 96 S Ct 1612, 48 L Ed 2d 1 (1976); *People v Hill*, 429 Mich 382 (1987).

[9]*See, eg, Illinois v Perkins, supra* (Undercover informant); *Minnesota v Murphy*, 465 US 420, 104 S Ct 1136, 79 L Ed 2d 409 (1984)(Probation officer); *Pennsylvania v Muniz*, 496 US 582, 110 S Ct 2638, 110 L Ed 2d 528 (1990)(Police station booking officer).

neither acts for the state,[10] nor receives the benefits of its immunities.[11] And a reserve officer — who assists fully trained and sworn officers only on a part-time basis[12] — is certainly in no more restrictive posture than a regular police officer. To hold otherwise would impose legal restrictions designed to ensure fairness in courts upon each ordinary interaction a police officer undertakes in his personal life. And as this is clearly beyond the scope of *Miranda*, the logic of such a position can find no support in the law.

In this case, Defendant challenges the admissibility of statements he made to Dean Heintzelman — citing Heintzelman's status as a police reservist to justify its suppression. But though *Amicus* gladly grants that a police reservist may on occasion be fulfilling a law-enforcement function, and on such occasions will be engaging in action on behalf of the state, Defendant's claim ignores the central question in this case about the admissibility of Defendant's statements — or, in fact, the admissibility of any statement made to one with any relationship to law enforcement . The answer, it seems to *Amicus*, will depend on the facts and circumstances of each particular case: was the Officer — subjectively and objectively — participating in an interaction with a charged defendant on behalf of the state, or in the course of his own private affairs. If the former, then he should be held to the standards the Law imposes upon police officers; if the latter, then he has no greater duty

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[10]*See, eg, Wincher v City of Detroit*, 144 Mich 448 (1985); *Wright v Skate Country, Inc,* 734 So 2d 874 (La App, 1999); *Latuszkin v City of Chicago,* 250 F3d 502 (CA 7, 2001). *Cf, Gibbons v Carraway*, 455 Mich 314 (1997).

[11]*See, eg,* MCL 750.227b. *Compare, People v LeClaire*, 137 Mich App 657 (1984)(Off-duty officer) with *People v Khoury*, 437 Mich 954 (1991)(Officer on duty).

[12]In addition, police reservists are often unpaid volunteers — as apparently was the case, here. *See*, 24a-26a, 60a.

than an ordinary citizen. As the Supreme Court noted in *Illinois v Perkins*, it is simply incorrect to say that the full panoply of procedural safeguards spring into play "whenever a suspect is in custody in a technical sense and converses with someone who happens to be a government agent."[13]

Amicus notes that any other friend of Defendant's who visited him in jail could have been subpoenaed[14] — and, unless Defendant's own wife,[15] compelled to reveal substance of their conversation in court. Moreover, in this case, any claim that Defendant was unaware of the risks of speaking candidly to his friend is disingenuous: the facts show that Defendant asked Dean Heintzelman to come see him;[16] Heintzelman came *in uniform*, making no attempt to hide his links to law enforcement;[17] and the "disclosure" the reservist obtained from the meeting was no more than ordinary friend would have gotten — for his inquiries extended no further than the questions a friend would have asked: he asked not for incriminating details, nor for possible evidentiary links to the crime; rather, his inquiry was the sort of simple, pointed, and direct — "did you do it?"[18] Accordingly, it seems to *Amicus*, Heintzelman was acting in his capacity as a friend, rather than an agent of law enforcement — and any statements Defendant made during the course of their conversation should be admissible into evidence at trial.

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[13] *Illinois v Perkins, supra* at 297.

[14] MCL 2.506

[15] MCL 600.2162

[16] 26a.

[17] 29a.

[18] 26a-29a.

This approach is similar to rules adopted in other jurisdictions which have considered similar questions: In *Cook v State*,[19] for example, the Georgia Supreme Court concluded there was no legal requirement that the defendant's father give *Miranda*-warnings before talking to his son in jail — even though the father was an FBI agent, who relayed to the police the substance of the conversation — since the defendant's father was not actively involved in investigating the crime, and was acting out of personal concern for his son's welfare, rather than as a law enforcement officer. In *United States v Gaddy*,[20] the Eleventh Circuit approved use of a confession obtained through the intervention of the defendant's aunt — herself a police officer in the jurisdiction holding him — after he had already asserted his *Miranda*-right to counsel, finding that her involvement in the case was personal, rather than professional, and was not procured by the investigating officers. In *State v Pursley*,[21] the Kansas Supreme Court held that the defendant's statement in jail to a friend of his — a former police officer — was admissible into evidence despite the lack of *Miranda*-warnings, since the record disclosed that the friend spoke to the defendant on his own initiative due to their personal relationship, and not at the instance of the police officers investigating the murder for which the defendant was ultimately convicted. And in *Owens v Commonwealth,*[22] the Virginia Supreme Court drew a legal and factual distinction between actions undertaken as a friend, and as an investigator, that is quite telling.

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[19]*Cook v State*, 270 Ga 820, 514 SE2d 657 (1999).

[20]*United States v Gaddy*, 894 F2d 1307 (CA 11, 1990).

[21]*State v Pursley*, 238 Kan 253, 710 P2d 1231 (1985).

[22]*Owens v Commonwealth,* 218 Va 69, 235 SE2d 331 (1977).

Upon investigating a recent burglary at a business place, a police lieutenant — actively suspecting the defendant of complicity in the crime — went to the defendant's house and invited him to the police station for a talk. Defendant and the officer were friends, and during the course of the ride to the police station, the defendant asked what the officer wanted; the officer replied that "it took a man to tell the truth" — at which point in time, the defendant admitted the burglary. The admission was admitted into evidence at his trial over the defendant's objection — and, on appeal, the defendant claimed a violation of his *Miranda*-rights. In rejecting the defendant's claim, the Virginia Supreme Court noted the differences between a conversation between friends, and a pointed police interrogation, noting that:

> In the present case...the investigating officer did not initiate the conversation with [the defendant] and [the officer] had no intention of attempting to elicit a confession....The trial court could reasonably infer...that the officer, as a friend, was merely offering advice for [the defendant's] guidance...Certainly, there is a great difference between...extolling as a manly virtue the telling of the truth...and deliberately and intentionally applying psychological pressure to induce an incriminating revelation....[23]

Thus, the cases seem to draw clear distinctions between police officers acting to investigate crimes, and police officers or agents going about the business of life — holding them accountable to the rules and procedures of a criminal investigation, but declining to impose procedural rules beyond their limited scope, when the officer is engaged in the business of his own personal affairs.[24] Each case, therefore, will turn on its unique facts — and the totality of circumstances in each

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[23]*Owens v Commonwealth, supra* at 74-75.

[24]*Cook v State, supra* at 827; *United States v Gaddy, supra* at 1309-1311.

individual case will seek to determine whether the officer's conduct was official, or personal. Applying this approach to the present case, *Amicus* can see no basis for suppressing Defendant's statements in this case:

- Heintzelman was not part of the team or task force investigating the homicide.[25]
- Heintzelman was not asked by a superior to exploit his friendship with the accused — but, rather, came to see Defendant at the latter's express invitation.[26]
- Heintzelman's questions were not prompted by his professional duty, but out of personal concern for his friend.[27]
- Heintzelman did not come as part of his official duties — but rather, after his reservist duties had concluded for the day.[28]
- And most importantly, Heintzelman's chat with Defendant did not involve any form of textbook interrogation, but rather, involved the personal discussion of two friends about a painful and embarrassing subject — and ended precisely when a police investigator would have sensed an opening and begun to press his advantage.[29]

Tellingly, the conversation between Defendant and his friend ended abruptly at the exact moment when a police interrogator would have been beginning to press the questioning further —

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[25]*Cook v State, supra* at 827; *United States v Gaddy, supra* at 1311. *See*, 27a, 60a-64a.

[26]*Cook v State, supra* at 827; *United States v Gaddy, supra* at 1311. *See*, 26a-27a, 60a-64a.

[27]*Cook v State, supra* at 827-828; *United States v Gaddy, supra* at 1311. *See*, 26a-27a, 60a-64a.

[28]*United States v Gaddy, supra* at 1311. *See*, 27a, 64a.

[29]*See*, 28a-29a, 64a-65a.

ie, when Defendant appeared to acknowledge his complicity in the crime.[30] After all, a typical human being confronting a friend's admission of guilt in a heinous crime may have one of several reactions that will vary from person to person, and soul to soul: horror, shock, shame, withdrawal from contact — or, perhaps, simply sadness and regret. A police interrogator, however, will have a predictable and unvarying response, whatever his own personal reaction to the crime: the interrogator will sense the fleeting moment of opportunity, seize the opening, and move in for the kill — pressing his advantage to seek incriminating details and further admissions. Thus, we see that there was no "interaction of custody and official interrogation" because the purported questioner was motivated by personal concerns, rather than official ones — and behaved not as police interrogator, but as a concerned, albeit disappointed friend.

In this case, by any objective measure, Dean Heintzelman was fulfilling the role of a friend, rather than a police interrogator: Defendant invited him as a friend, and Heintzelman reacted to Defendant's admissions as a friend — by simply leaving the room, rather than by pressing for further evidence of guilt. Accordingly, *Amicus* agrees with the People: the Court of Appeals analyzed the problem correctly, came to the appropriate conclusion — and this Court should affirm Defendant's conviction.

B. A police reservist, like other officers with non-investigative duties, is not bound by *Miranda* when not actively investigating a crime.

The premise underlying Defendant's argument in this case appears to be that Dean Heintzelman's status as a reserve police officer required him to comply with all procedural

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[30] *See*, 28a-29a, 64a-65a.

requirements for taking a confession, when he appeared to visit his friend at the jail, in order for the substance of their conversation to be admissible into evidence. As shown above, however, Heintzelman's visit was as a friend, rather than a law enforcement officer — and, accordingly, the *Miranda* rules simply did not apply to him. But even if we grant Defendant's premise that Heintzleman's relationship to the police department justifies an inquiry into his function as an agent of the government, there is no basis on the record to suppress the evidence in question.

The record shows that Heintzelman's duties as a police reservist did not include criminal investigations, but rather consisted of occasionally transporting prisoners, security at ball games, and assisting with jail visitation.[31] His real occupation consisted of owning an excavating company, and operating heavy machinery.[32] Nothing suggests that Heintzelman on this occasion — or ever, during the course of his duties as a reserve police officer — was assigned to investigating or helping to prosecute crimes, or that he was fulfilling any sort of police investigative function in visiting Defendant at the jail.

Granting that a police reservist engaged in a criminal investigation would be a state actor bound by the full panoply of *Miranda*-related restrictions, one who is not engaged in any law enforcement activity is simply not acting on behalf of the state in investigating crimes — and the Law imposes no duty on a private citizen to follow rules designed to guide law enforcement. Simply put — a police reservist is not bound by restrictions that a full-fledged police officer need not follow; and

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[31] 24a-27a, 60a.

[32] 60a.

as a full-fledged police officer is under no duty to comply with *Miranda* in the conduct of his private life, neither is a reservist.

It is well-settled that off-duty police officers working as private security guards need not give *Miranda*-warnings;[33] moreover, most governmental employees — those who are not involved in detecting, investigating, or prosecuting criminal activities, such as probation officers,[34] social services caseworkers,[35] juvenile corrections officers,[36] prison adminstrators,[37] or even uniformed police officers who are not presently engaged in custodial interrogation[38] — need not give *Miranda*-warnings. It follows that an off-duty police reservist — who is neither participating in a criminal investigation, nor acting at the behest of law enforcement — is free to converse privately with anyone

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[33]*See, eg, In re Interest of RR,* 447 NW2d 922 (SD, 1989); *Grand Rapids v Impens,* 414 Mich 667 (1982); *People v Morgan*, 24 Mich App 660 (1970); *People v Omell*, 15 Mich App 154 (1968);

[34]*Minnesota v Murphy, supra; see, People v Hardenbrook*, 68 Mich App 640 (1976).

[35]*People v Porterfield,* 166 Mich App 562 (1988); *see, State v Sprouse*, 325 SC 275, 478 SE2d 871 (1978).

[36]*People v Anderson,* 209 Mich App 527 (1995); *see, State v Tibiatowski*, 590 NW2d 305 (Minn, 1999)..

[37]*See, Cervantes v Walker*, 589 F2d 424, 427-428 (CA 9, 1978); *United States v Conley*, 779 F2d 970, 972-973 (CA4, 1985); *United States v Ozuna*, 170 F3d 654, 658 n 3 (CA 6, 1999); People v Als, 83 NY 2d 94, 608 NYS2d 139, 629 NE2d 1018 (1993); *State v Tibiatowski, supra.*

Actually, the application of *Miranda* behind prison walls will pose a large number of conceptual problems, stemming from the fact that every prison inmate is, by definition, "in custody" — and if they are not, they have committed a separate offense by escaping from custody. Accordingly, the Law seeks to determine whether there are any additional restraints on the inmate, which would approximate the difference between being "at liberty" within the confines of prison, and being subjected to additional restraints that would approach "custody" within the prison environment.

[38]*See, eg, Pennsylvania v Muniz, supra.*

of his choosing, without the need to observe the restrictions of *Miranda* in the course of all conversations he may have during the course of his life. Rather, unless the officer is engaging in custodial interrogation[39] — and actively engaging in conducted directed at eliciting an incriminating response from a suspect under investigation[40] — the details of his conversations with others may be subject to objections on grounds of hearsay[41] or relevance,[42] but not for failure to observe the requirements of *Miranda*.

In this case, nothing in the record supports a finding that Dean Heitzelman was acting in an official capacity, investigating the murder of Randy Laufer, or engaging in any kind of interrogation

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[39]*Miranda v Arizona, supra.*

[40]*Rhode Island v Innis,* 446 US 291, 100 S Ct 1682, 64 L Ed 2d 297 (1980).

[41]MRE 801.

[42]MRE 402.

in speaking to his friend.[43] Accordingly, Defendant's claim of error falls on its premise, and this Court should affirm the decision of the Court of Appeals.

C. Defendant's personal invitation to Heintzelman renders moot any challenge to the latter's visit or questions — or Defendant's response.

Lastly, *Amicus* notes that the record shows that it was Defendant who requested to see Dean Heitzelman.[44] This renders Defendant's challenge to the admission of his statement legally and logically untenable.

Whether through assertion of the Sixth Amendment, or the *Miranda*-right to counsel, a defendant who reinitiates contact with the authorities permits them to resume questioning.[45]

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[43] *Amicus* notes with interest the Court of Appeals' observation that Defendant denied making the statement at issue. And, in a different factual context, *Amicus* would be arguing that a defendant should not be heard to seek suppression of a statement he denies making, since the critical factual dispute would be whether the statement was actual or fabricated — not the theoretical setting of a statement the defendant insists was never made at all.

In this case, however, Defendant's "denial" is less than unequivocal: while a defense witness testified that Defendant's response to the question "did you do it" was "No," Defendant himself merely testified that his response was "not anything at all like they're trying to make it out to be," and "that basically was the end of that." (42a). While this leaves the content of the statement open to question, it strikes *Amicus* as acknowledging some kind of response to the question — which, in turn, may give him standing to challenge its admission, since the prosecution is seeking to use the answer to incriminate him.

In any case, the theoretical legal point at issue — a defendant's standing to challenge the procedural pedigree of a statement he insists he never made — is not squarely presented on the facts of this case, and beyond the scope of this Court's apparent interest. Accordingly, *Amicus* will leave the question for another day.

[44] 26a-27a, 51a-53a.

[45] *Edwards v Arizona*, 451 US 477, 101 S Ct 1880, 68 L Ed 2d 378 (1981); *Michigan v Jackson*, 475 US 625, 106 S Ct 1404, 89 L Ed 2d 631 (1986); *People v Paintman*, 412 Mich 518

Therefore, if we grant Defendant's claim that Heitzelman was a governmental actor, then his request to see his old friend constituted a reinitiation of contact under *Edwards v Arizona*[46] and *Michigan v Jackson*[47] — his willingness to speak to the uniformed officer was an implicit waiver of his rights[48] — and his claim of error fails. On the other hand, if Heitzelman was *not* a government actor, then Defendant's claim fails because the restrictions on speaking to those in custody apply only to agents of the government, and not to private citizens.[49] In either case, however, the claim is untenable.

Seeking to escape from this conceptual *cul-de-sac*, Defendant suggests that the Supreme Court case of *Illinois v Perkins*[50] compels a different result — noting, among other things, that the police officer in Perkins was an undercover agent, while Dean Heiztelman came to visit Defendant while dressed in his reservist police uniform. A brief look the case law, however, shows that this reading of *Perkins* is in error — and, in fact, that *Perkins* supports the general rule that a police officer acting in a private capacity is not a state actor, in the context of the law of confessions.

1. The holding of *Illinois v Perkins* teaches that a defendant must perceive himself to be undergoing interrogation before there can be any interaction between custody and interrogation.

(1982). *See, People v Kowalski*, 230 Mich App 464, 472 (1998); *People v McQuaig*, 126 Mich App 754 (1983).

[46]*Edwards v Arizona, supra.*

[47]*Michigan v Jackson, supra.*

[48]*North Carolina v Butler,* 441 US 369, 99 S Ct 1755, 60 L Ed 2d 286 (1979).

[49]*Cook v State, supra; State v Pursley, supra; United States v Gaddy, supra.*

[50]*Illinois v Perkins, supra.*

The key point of the Supreme Court's decision in *Illinois v Perkins* is that because the defendant was unaware that he was talking to an undercover police officer, there was no "interaction of custody and interrogation."[51] In such settings there may be other reasons for suppressing statements — violation of right to counsel, for example[52] — but *Miranda*'s concerns about the "inherent compulsion" of custodial interrogation have no place, and the Court rejected the notion that *Miranda*-warnings were required "whenever a suspect is in custody in a technical sense and converses with someone who happens to be a government agent."[53] This is consistent with other situations where the same sorts of pressures are missing — such as interviews with a probation officer,[54] prison official,[55] or booking officer:[56] what is significant is not the uniform, or the employment status of the participants, but the likelihood that the defendant will feel pressured or coerced into speaking.

In this case, Defendant's testimony was largely rejected by the trial court, who chose to credit Heitzelman's version of events.[57] This establishes, for purposes of appeal, that Heitzelman came to see Defendant at the latter's request — relayed through Defendant's wife;[58] that Heitzelman came

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[51] *Illinois v Perkins, supra* at 297.

[52] *See, eg, United States v Henry*, 447 US 264, 100 S Ct 2183, 65 L Ed 2d 115 (1980).

[53] *Illinois v Perkins, supra* at 297.

[54] *Minnesota v Murphy, supra.*

[55] *United States v Cervantes, supra.*

[56] *Pennsylvania v Muniz, supra.*

[57] 50a-53a.

[58] 32a-33a, 51a.

in the capacity of friend, rather than investigating police officer;[59] and that Heitzelman came in uniform.[60] As there would be no disguising the fact of his attire, Defendant was necessarily aware that Heitzelman was affiliated with the police in some capacity — and he may not claim that he was deceived. However, to the extent that the record shows — and the trial court found — that the two men spoke as friends, the correct application of *Perkins* to this case serves to underscore *Miranda*'s inapplicability to the present facts.

Perkins teaches that where the defendant has "no reason to feel" that someone is in a position "to force him to answer questions" or "affect [his] future treatment," there is no interaction of custody and interrogation, and that a defendant speaks to a non-interrogator "at his own peril."[61] In the case of a friend who is a police officer, similar logic and concerns would hold that it is the fact of the friendship — and not the uniform — that is the relevant consideration. One speaking to a friend is not undergoing interrogation, but rather is conversing on whatever subject is at hand; and while a suspect may disclose facts to friend that he would not to an interrogator, that does not change the nature of the relationship. One may, after all, make incriminating admissions to a law enforcement officer in a variety of contexts — during booking,[62] during incarceration,[63] or in the context of a personal relationship.[64] But it is only in the context of custodial interrogation that the

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[59]26a-29a, 52a.

[60]29a.

[61]*Illinois v Perkins, supra* at 298.

[62]*Pennsylvania v Muniz, supra.*

[63]*Cervantes v Walker, supra; People v Als, supra; State v Tibiatowski, supra.*

[64]*Cook v State, supra; State v Pursley, supra; United States v Gaddy, supra.*

concerns underlying *Miranda* come into play; and it is only in this context that any restrictions on conversation and discourse arise.

In this case, even Defendant does not testify that he felt himself undergoing interrogation — and, in fact, does not acknowledge making any admissions.[65] Accordingly, there appears to be no custodial interrogation at all in this case: either Defendant said nothing, and Heitzelman is simply manufacturing admissions; or Heitzelman and Defendant were having a visit as friends, which came to an end when Defendant appeared to acknowledge his involvement in the murder. In neither case, however, is there an "interaction of custody and interrogation" — and Defendant's contrary claim is without support in the record.

D. Passing Thoughts

The purpose of the Fifth Amendment's right against compulsory self-incrimination is to shield us all from governmental overreaching, and guard against coercion by agents of the state in questioning those whose freedom hangs in the balance.[66] A confession, while perhaps good for the defendant's soul, places him in some legal peril; and History teaches us that the application of undue pressure on one who is already in legal jeopardy can lead to false and unreliable evidence,[67] as well as compromising the ideals and promises of civilization.[68] And while a human being's urge to confess may stem from the demands of his own conscience to accept responsibility for his acts, when

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[65]42a.

[66]*See, eg, Colorado v Connelly,* 479 US 157, 107 S Ct 515, 93 L Ed 2d 473 (1986).

[67]*Cf,* Yoll, *1692 Witch Hunt: The Layman's Guide to the Salem Witchcraft Trials* (1992); Dolan, *The Salem Witch Trials* (2002).

[68]*Cf,* Kamen, *The Spanish Inquisition*, 174-192 (1997).

it flows not from his soul, but from the application of an outside force at the instance of the Government, the Fifth Amendment stands to protect us all against actions that in time, though blinded by the best of intentions, might transform from a quest for security into a routine of oppression.

Nevertheless, the unspoken assumption which appears to form the bedrock of Defendant's argument — and underlies much modern thinking in the field of criminal law, as well — is that a major goal of confessions law should be "to protect [the defendant's] chances at the forthcoming trial."[69] From this premise, it logically follows that there must be something fundamentally wrong with the act of confession — and that it is confessions, rather than police coercion or duress, that is the real evil at the heart of interrogation.[70] Yet this premise leads us not to a rule of Law, but to lawlessness.

Our society recognizes that a confession of guilt is among the most reliable methods that our imperfect system of justice has for establishing guilt, and "significantly contributes to the certitude with which we may believe the accused is guilty."[71] However, as one noted authority observed, "[n]owhere, except in the rhetoric of confessions law, does the law reflect anxiety that the investigation may be too successful and thus deny the defendant a chance for acquittal at trial."[72]

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[69]White, *Police Trickery in Inducing Confessions*, 127 U PA L REV 581, 593 (1979).

[70]*Cf, Miranda v Arizona, supra* at 466.

[71]*Miranda v Arizona, supra* at 538 (White, J, dissenting). See also, Stein v New York, 346 US 156, 184-185, 73 S Ct 1077, 97 L Ed 1522 (1953).

[72]Grano, *Selling the Idea to Tell the Truth: The Professional Interrogator and Modern Confessions Law,* 84 MICH L REV 662, 678 (1986).

For anyone accepting the fundamental legitimacy of our Society, an admission of guilt should hardly provoke the onset of hand-wringing. By providing firm confirmation of guilt, it helps Society enforce its laws, for the protection of all — most notably, the weak and defenseless. And an admission of wrongdoing often signals something redeemable in the wrongdoer's soul — which may be forever lost if Society comes to prove itself unable, or unwilling, to enforce its own laws. As Justice Scalia once observed:

> While every person is entitled to remain silent, its is more virtuous for the wrongdoer to admit his offense and accept the punishment he deserves....A confession os rightly regarded...as warranting a reduction of sentence, because it demonstrates a recognition and affirmative acceptance of personal responsibility for criminal conduct, which is the beginning of reform. We should, then, rejoice at an honest confession, rather than pity the 'poor fool' who made it; and we should regret the attempted retraction of that good act, rather than seek to facilitate and encourage it. To design our laws on premises contrary to these is to abandon belief in either personal responsibility or the moral claim of just government to obedience.[73]

So long as the police do nothing that the Law forbids, a suspect's acknowledgment of guilt is an event to be applauded, not one to regret. Certainly, there is no need to foreclose the use of such evidence merely because it complicates his chance to win an acquittal. Each of us, after all, bears the ultimate responsibility for our acts, and Society serves no public purpose by adopting rules that grant accused criminals the psychological benefits of accepting responsibility for the actions — while relieving them of the legal consequence of doing so.

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[73] *Minnick v Mississippi,* 498 US 146, 167, 111 S Ct 486, 112 L Ed 2d 489 (1990)(Scalia, J, dissenting).

In this case, an accused murderer asked to speak to an old friend — and, when the friend stopped by and asked about the event that had brought them together, acknowledged that he bore responsibility for the murder, though sparing his friend the details. When, as a defendant on trial for his crime, he can point to no clear transgression by the police — but instead, points only to the clothing that his friend wore at the time, as the reason we should all pretend the event never occurred — there is no reason for this Court to help him retrace his first tentative step toward personal redemption for his act of murder.

Accordingly, this Court should reject Defendant's claim of error, and affirm his conviction and sentence.

RELIEF

WHEREFORE, this Court should affirm Defendant's conviction and sentence below.

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Dated: October 24, 2003

JC/lw
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